

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ORLANDO JAMES,

Plaintiff,

File No. 2:07-cv-235

v.

HON. ROBERT HOLMES BELL

UNKNOWN JONDREAU, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER
REJECTING THE REPORT AND RECOMMENDATION

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff Orlando James. Before the Court is a Report and Recommendation (“R&R”) issued by the United States Magistrate Judge recommending that the Court dismiss this case for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Dkt. No. 82.)

The basis for the recommendation of dismissal is Plaintiff’s failure to file a pretrial narrative statement in accordance with the Court’s Case Management Order. To date, Plaintiff has not filed a pretrial narrative statement. Though he has not complied with the terms of the Case Management Order, the Court notes that Plaintiff filed a motion for extension of time to comply with that order and that, since the R&R, Plaintiff has provided details in a joint final pretrial order submitted together with Defendants. (Dkt. No. 83.) Thus, it appears that Plaintiff maintains an interest in prosecuting this action. Considering

the circumstances, including Plaintiff's position as a prisoner proceeding pro se in this matter, the Court declines to hold that Plaintiff's conduct is contumacious or is indicative of a clear pattern of delay such that dismissal of his case is warranted. *Cf. Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991) (upholding dismissal where the prisoner failed to file requests for discovery despite two extensions of time and failed to file a pretrial statement). Therefore, the Court will reject the R&R. The Magistrate Judge is directed to convene the settlement and final pretrial conference forthwith, at which the appearance of incarcerated witnesses at trial shall be discussed, if the matter is to proceed to trial.

Accordingly,

IT IS HEREBY ORDERED that the R&R (Dkt. No. 82) is **REJECTED** as the opinion of the Court.

Dated: March 10, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE